

ESTTA Tracking number: **ESTTA379260**

Filing date: **11/18/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Braniff Airways Global Holdings Corporation		
Entity	Corporation	Citizenship	NV
Address	2360 Corporate Circle, Suite 400 Henderson, NV 89074 UNITED STATES		

Attorney information	Matthew Swyers The Trademark Company 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@TheTrademarkCompany.com Phone:(800) 906-8626
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Applicant Information

Application No	85040280	Publication date	10/19/2010
Opposition Filing Date	11/18/2010	Opposition Period Ends	11/18/2010
Applicant	200 Kelsey Associates, LLC Suite 100 One Radisson Plaza New Rochelle, NY 10801 UNITED STATES		

Goods/Services Affected by Opposition

Class 039. All goods and services in the class are opposed, namely: Transportation of passengers and/or goods by air

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BRANIFF INTERNATIONAL		
Goods/Services	Transportation of passengers and cargo via air.		

Attachments	Notice of Opposition.pdf (7 pages)(22432 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matthew H. Swyers/
Name	Matthew Swyers
Date	11/18/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of Serial No. 85/040,280,
For the mark BI BRANIFF INTERNATIONAL and design,
Published for Opposition on the Principal Register on October 19, 2010,

Braniff Airways Global Holdings Corporation,	:	
	:	
Opposer,	:	
	:	
	:	Opposition No. _____
vs.	:	
	:	
200 Kelsey Associates, LLC,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

COMES NOW Opposer Braniff Airways Global Holdings Corporation (hereinafter “Opposer”), and pursuant to the applicable provisions of the TBMP files the instant Notice of Opposition against the registration of Applicant 200 Kelsey Associates, LLC’s (hereinafter “Applicant”) applied-for mark BI BRANIFF INTERNATIONAL and design as more fully set forth in Serial No. 85/040,280. Opposer believes that it will be damaged by the registration of Serial No. 85/040,280 for the mark BI BRANIFF INTERNATIONAL and design and, accordingly, requests that this honorable tribunal to grant the instant opposition and not permit the applied-for mark at issue to register.

Grounds for Opposition

As grounds for the instant Notice of Opposition, it is alleged that the registration of Applicant’s mark BI BRANIFF INTERNATIONAL and design as more fully set forth in Serial No. 85/040,280 (hereinafter “Applicant’s Mark”) would be likely to cause confusion with Opposer’s pre-existing rights in the mark BRANIFF INTERNATIONAL and related marks (hereinafter “Opposer’s Marks”) which retain priority of use over the Applicant’s Mark by virtue

of their prior use in commerce in the United States. In addition, it is alleged that the Applicant is perpetrating fraud upon the U.S. Patent and Trademark Office by applying for and maintaining an Intent-to-Use application for Applicant's Mark without a bona fide intent to use the mark itself but rather merely for the sale and brokerage of said applied-for mark.

Statement of Facts

In support of the instant Notice of Opposition, it is alleged that:

1. Opposer is a Nevada Corporation with principal place of business located at 2360 Corporate Circle, Suite 400, Henderson, NV 89074.
2. Opposer and/or its predecessors in interests, is the owner of Opposer's Marks used on or in connection with the transportation of passengers and cargo via air.
3. Opposer and/or its predecessors in interests has used and/or has maintained an intent to resume use of Opposer's Marks in connection with the above-identified services in interstate commerce since as early as 1965.
4. Opposer and/or its predecessors in interests has maintained continuous use and/or periods of permissible non-use of the Opposer's Marks in connection with the above-identified services since as early as 1965.
5. Opposer and/or its predecessors in interests has invested significant sums of money in the promotion of Opposer's Marks and the Opposer's services in the United States.
6. As a result of the aforesaid, Opposer and/or its predecessors in interests has developed a valuable reputation and goodwill in Opposer's Marks and has achieved a following among relevant consuming public prior to the filing and/or priority date of Applicant's Mark.
7. Opposer had several previous registrations with the United States Patent and Trademark Office for the marks at issue.

8. Based upon information and belief, Applicant is a New York limited liability corporation with a principal place of business located at Suite 100 One Radisson Plaza New Rochelle, NY 10801.

9. Applicant asserted a bona fide intent to use Applicant's Mark in connection with "Transportation of passengers and/or goods by air" in International Class 39.

10. Contrary to these assertions, however, Applicant is actively engaged in attempting to sell the intellectual property associated with the mark at issue and retains no bona fide intent to actually use the mark in commerce itself. *See* Exhibit A (Offer to sell BRANIFF mark).

Count I
Likelihood of Confusion

11. Opposer hereby incorporates Paragraphs 1 through 10 as if fully set forth herein.

12. Opposer's rights in the Opposer's Marks have priority of use over Applicant's rights, if any, in Applicant's Mark, inasmuch as Opposer and/or its predecessors in interests commenced its use of the Opposer's Marks in connection with its services in interstate commerce prior to the filing, registration, and/or priority of use date of the Applicant's Mark.

13. Opposer believes that consumers confronted with the Applicant's Mark will inevitably be confused and deceived into the mistaken belief that the Applicant's services have their origin or are in some manner connected with the Opposer and/or Opposer's services or other intellectual property rights retained.

14. The registration of the Opposer's Mark would confer upon Applicant rights to which it is not entitled and is inconsistent with the prior established rights of Opposer in the Opposer's Marks.

15. By reason foregoing, Opposer will be seriously damaged by the registration of the Applicant's Mark.

Count II
Fraud in the Filing of Serial No. 85/040,280

16. Opposer hereby incorporates Paragraphs 1 through 15 as if fully set forth herein.

17. On or about October 31, 2006 Applicant filed Serial No. 77/032,964 for the mark now at issue herein in Serial No. 85/040,280.

18. Serial No. 77/032,964 was published for opposition as an intent-to-use mark issued a Notice of Allowance on or about July 31, 2007.

19. Thereafter Applicant sought and was granted the maximum five (5) extension of time in which to file its Statement of Use in regard to converting the application to a use-based mark and, correspondingly, receiving a Certificate of Registration therefore.

20. Prior to the fifth (5th) extension expiring on the 77/032,964 Applicant filed for the 85/040,280 mark to continue its reservation of rights in the mark.

21. However, rather than retaining a bona fide intention to use the mark itself as is required by the statute, Applicant, as demonstrated through its actions, is merely attempting to continue its reservation of the mark without any intent to use the same.

22. As evidenced by Exhibit A as well as additional evidence which will be brought forward during the trial of this matter Applicant is merely using the intent-to-use filing system of the U.S. Patent and Trademark Office to reserve rights in marks to which it retains no legitimate or bona fide intent to use for the purpose of selling the same to third parties.

23. In so doing, Applicant provided knowingly false and material representations to the U.S. Patent and Trademark Office concerning its non-existent bona fide intent to use the mark as a whole insofar as it knew it has no legitimate rights or interest in the mark aside from an intent to wrongfully profit by using the intent-to-use filing system to acquire alleged rights in marks for the sale of the same.

24. Applicant's filing was merely perpetrated with the subjective intent of misleading the U.S. Patent and Trademark Office to grant rights in a mark for the Applicant in an ongoing effort to misappropriate the trademark rights to which it is not entitled.

28. Specific instances of Applicant's knowingly false and intentional material misrepresentations to the U.S. Patent and Trademark Office in its effort to mislead the same to grant the subject registration include:

(a) Providing that Applicant has a bona fide intent to use the mark at issue when no such intent exists;

(b) Offering for sale of the mark further evidencing the lack of intent to use the mark but rather using the intent-to-use system to secure rights for the brokerage of non-existent assets; and

(c) Submitting a declaration under 18 U.S.C. Section 1001 declaring he/she believes the applicant to be the owner of the trademark/service mark sought to be registered and to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake.

25. By reason foregoing, Opposer will be seriously damaged by the registration of the Applicant's Mark.

Conclusion

WHEREFORE Opposer Braniff Airways Global Holdings Corporation, by counsel, prays that the instant Notice of Opposition be granted and Serial No. 85/040,280 for the mark BI BRANIFF INTERNATIONAL and design not be permitted to register.

Respectfully submitted this 18th day of November, 2010.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Telephone (800) 906-8626 ext. 20
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Attorney for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

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	:	Opposition No. _____
vs.	:	
	:	
200 Kelsey Associates, LLC,	:	
	:	
Applicant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was sent via U.S.

Mail this 18th day of November, 2010 to the following:

Edmund J. Ferdinand, III
GRIMES & BATTERSBY, LLP
488 MAIN AVE STE 3
NORWALK CT 06851-1008

and

200 Kelsey Associates, LLC
Suite 100 One Radisson Plaza
New Rochelle, NY 10801

/Matthew H. Swyers/
Matthew H. Swyers